

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

Arlan Michael Arnold,

Defendant.

**ORDER**

Criminal No. 07-108(1) ADM/JSM

Civil No. 19-2512 ADM

Civil No. 11-2969 ADM

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Laura M. Provinzino, Assistant United States Attorney, United States Attorney's Office,  
Minneapolis, MN, on behalf of Plaintiff.

Arlan Michael Arnold, pro se.

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This matter is before the Court on the pro se motion of Defendant Arlan Michael Arnold for relief from his sentence pursuant to the Supreme Court's recent decision in Rehaif v. United States, 139 S. Ct. 2191 (2019). See Mot. to Vacate Sentence [Docket No. 78]. The government moves to dismiss Arnold's motion on the basis that it is barred by 28 U.S.C. § 2255(h). See Motion to Dismiss [Docket No. 80].

Arnold's request is a motion to vacate, set aside or correct his sentence pursuant to § 2255. However, Arnold has already previously (and unsuccessfully) sought relief under § 2255 from the judgment imposed in this case. [Docket No. 47]. And, Arnold already attempted to file a successive motion under § 2255 [Docket No. 70], which was denied for the same procedural errors as here. Before proceeding with a second or successive motion under § 2255, Arnold must first obtain the authorization of the Eighth Circuit Court of Appeals. See 28 U.S.C. § 2255(h). Because Arnold has not yet been granted the required authorization by the Eighth Circuit, the Court lacks jurisdiction to consider the merits of his motion for relief.

The only question remaining is whether to deny Arnold's motion or to transfer the motion to the Eighth Circuit for possible certification of Arnold's motion. The Court has reviewed the record in this case and concludes that it is highly unlikely the holding in Rehaif affects Arnold's sentence, as Arnold admitted that prior to his possession of ammunition he had been convicted of a crime punishable by a term of imprisonment exceeding one year. Plea Agreement [Docket No. 28]. Accordingly, a transfer of this matter to the Eighth Circuit for further consideration would not be in the interests of justice, and Arnold's motion will be denied rather than transferred. Nothing in this order precludes Arnold seeking, directly from the Eighth Circuit, certification to file a second or successive § 2255 motion.

### **ORDER**

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. The government's Motion to Dismiss [Docket No. 80] is **GRANTED**.
2. Defendant Arlan Michael Arnold's Motion to Vacate Sentence pursuant to 28 U.S.C. § 2255 [Docket No. 78] is **DENIED WITHOUT PREJUDICE FOR LACK OF JURISDICTION**.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

BY THE COURT:

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s/Ann D. Montgomery  
ANN D. MONTGOMERY  
U.S. DISTRICT JUDGE

Dated: November 14, 2019.